

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

Title 76, Chapter 5, Part 3

(Drafted by Esther Chelsea-McCarty)

LONG TITLE

General Description:

This bill

Highlighted Provisions:

This bill:

►

Money Appropriated in this Bill:

None

Other Special Clauses:

None

List of sections affected:

AMENDS:

76-5-301

76-5-301.1

76-5-302

76-5-303

76-5-303.5

76-5-304

76-5-305

76-5-307

76-5-308

76-5-308.5

76-5-309

76-5-310

76-5-311

ENACTS:

76-5-308.1

76-5-310.1

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

32 REPEALS:

33 76-5-306

34

35 Statutory text:

36 Part 3. Kidnapping, Trafficking, and Smuggling

37

38 76-5-301. Kidnapping.

39 (1)(a) As used in this section:

40 (i) "Against the will of an individual" includes without the consent of the legal guardian
41 or custodian of an individual who is a **mentally incompetent person**. (Should we define
42 **"mentally incompetent person"**? There isn't one in the entire code)

43 (ii) "Minor" means an individual who is 14 years old or older but younger than 18 years
44 old.

45 (b) Terms defined in Section 76-1-101.5 apply to this section.

46 (2) An actor commits kidnapping if the actor intentionally or knowingly, without
47 authority of law, and against the will of ~~[the victim]~~ an individual :

48 (a) detains or restrains the ~~[victim]~~ individual for any substantial period of time;

49 (b) detains or restrains the ~~[victim]~~ individual in circumstances exposing the ~~[victim]~~
50 individual to risk of bodily injury;

51 (c) holds the ~~[victim]~~ individual in involuntary servitude;

52 (d) detains or restrains a minor without the consent of the minor's parent or legal
53 guardian or the consent of a person acting in loco parentis~~[, if the minor is 14 years of age or~~
54 ~~older but younger than 18 years of age];~~ or

55 (e) moves the ~~[victim]~~ individual any substantial distance or across a state line.

56 ~~[(2) As used in this section, acting "against the will of the victim" includes acting without the~~
57 ~~consent of the legal guardian or custodian of a victim who is a mentally incompetent person.]~~

58 (3) ~~[Kidnapping]~~ A violation of Subsection (2) is a second degree felony.

59

60 76-5-301.1. Child kidnapping.

61 (1) (a) As used in this section, "child" means an individual under 14 years old.

62 (b) Terms defined in Section 76-1-101.5 apply to this section.

63 (2) An actor commits child kidnapping if the actor intentionally or knowingly, without

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

64 authority of law, and by any means and in any manner, seizes, confines, detains, or
65 transports a child ~~[under the age of 14]~~ without the consent of the ~~[victim's]~~ child's parent or
66 guardian, or the consent of a person acting in loco parentis.

67 ~~[(2) Violation of Section 76-5-303 is not a violation of this section.]~~

68 (3) ~~[Child kidnapping]~~ A violation of Subsection (2) is a first degree felony. ~~[punishable~~
69 ~~by a term of imprisonment of:]~~

70 (4) An actor convicted of a violation of this section shall be sentenced to imprisonment
71 of:

72 (a) except as provided in Subsection ~~[(3)]~~ (4) (b), ~~[(3)]~~ (4) (c), or ~~[(4)]~~ (5), not less
73 than 15 years and which may be for life;

74 (b) except as provided in Subsection ~~[(3)]~~ (4) (c) or ~~[(4)]~~ (5), life without parole, if the
75 trier of fact finds that during the course of the commission of the child kidnapping the
76 ~~[defendant]~~ actor caused serious bodily injury to another; or

77 (c) life without parole, if the trier of fact finds that at the time of the commission of the
78 child kidnapping the ~~[defendant]~~ actor was previously convicted of a grievous sexual
79 offense.

80 ~~[(4)]~~ (5) If, when imposing a sentence under Subsection ~~[(3)]~~ (4) (a) or (b), a court
81 finds that a lesser term than the term described in Subsection ~~[(3)]~~ (4) (a) or (b) is in the
82 interests of justice and states the reasons for this finding on the record, the court may impose
83 a term of imprisonment of not less than:

84 (a) for purposes of Subsection ~~[(3)]~~ (4) (b), 15 years and which may be for life; or

85 (b) for purposes of Subsection ~~[(3)]~~ (4) (a) or (b):

86 (i) 10 years and which may be for life; or

87 (ii) six years and which may be for life.

88 ~~[(5)]~~ (6) The provisions of Subsection ~~[(4)]~~ (5) do not apply when a person is
89 sentenced under Subsection ~~[(3)]~~ (4) (c).

90 ~~[(6)]~~ (7) Subsections ~~[(3)]~~ (4) (b) and ~~[(3)]~~ (4) (c) do not apply if the defendant was
91 younger than 18 years of age at the time of the offense.

92 ~~[(7)]~~ (8) Imprisonment under this section is mandatory in accordance with Section
93 76-3-406.

94 (9) A violation of Section 76-5-303 is not a violation of this section.

95

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

76-5-302. Aggravated kidnapping.

(1) (a) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

(i) Section 76-5-301, kidnapping; or

(ii) Section 76-5-304, unlawful detention.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits aggravated kidnapping if the actor, in the course of committing unlawful detention or kidnapping:

(a) uses or threatens to use a dangerous weapon as defined in Section 76-1-601; or

(b) acts with the intent to :

(i) [to] hold the victim for ransom or reward, [or] as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;

(ii) [to] facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

(iii) [to] hinder or delay the discovery of or reporting of a felony;

(iv) [to] inflict bodily injury on or to terrorize the victim or another individual;

(v) [to] interfere with the performance of any governmental or political function; or

(vi) [to] commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual

Offenses.

~~[(2) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:~~

~~—— (a) Section 76-5-301, kidnapping; or~~

~~—— (b) Section 76-5-304, unlawful detention.]~~

(3) (a) [Aggravated kidnapping] A violation of Subsection (2) in the course of committing unlawful detention is a third degree felony.

~~[(4) Aggravated kidnapping]~~ (b) A violation of Subsection (2) in the course of committing kidnapping is a first degree felony ~~[punishable by a term of imprisonment of] .~~

(4) An actor convicted of a violation of this section shall be sentenced to imprisonment of:

(a) except as provided in Subsection (4)(b), (4)(c), or (5), not less than 15 years and

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

128 which may be for life;

129 (b) except as provided in Subsection (4)(c) or (5), life without parole, if the trier of fact
130 finds that during the course of the commission of the aggravated kidnapping the defendant
131 caused serious bodily injury to the victim or another individual; or

132 (c) life without parole, if the trier of fact finds that at the time of the commission of the
133 aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

134 (5) If, when imposing a sentence under Subsection (4)(a) or (b), a court finds that a
135 lesser term than the term described in Subsection (4)(a) or (b) is in the interests of justice
136 and states the reasons for this finding on the record, the court may impose a term of
137 imprisonment of not less than:

138 (a) for purposes of Subsection (4)(b), 15 years and which may be for life; or

139 (b) for purposes of Subsection (4)(a) or (b):

140 (i) 10 years and which may be for life; or

141 (ii) six years and which may be for life.

142 (6) The provisions of Subsection (5) do not apply when a person is sentenced under
143 Subsection (4)(c).

144 (7) Subsections (4)(b) and (c) do not apply if the ~~[defendant]~~ actor was younger than
145 18 years ~~[of age]~~ old at the time of the offense.

146 (8) Imprisonment under Subsection (4) is mandatory in accordance with Section
147 76-3-406.

148

149 **76-5-303. Custodial interference.**

150 (1) (a) As used in this section:

151 ~~[(a)]~~ (i) "Child" means ~~[a person]~~ an individual under the age of 18.

152 ~~[(b)]~~ (ii) "Custody" means court-ordered physical custody entered by a court of
153 competent jurisdiction.

154 ~~[(c)]~~ (iii) "Visitation" means court-ordered parent-time or visitation entered by a court
155 of competent jurisdiction.

156 (b) Terms defined in Section 76-1-101.5 apply to this section.

157 (2)(a) ~~[A person]~~ An actor who is entitled to custody of a child ~~[is guilty of]~~ commits
158 custodial interference if, during a period of time when another ~~[person]~~ individual is entitled
159 to visitation of the child, the ~~[person]~~ actor takes, entices, conceals, detains, or withholds

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

160 the child from the ~~[person]~~ individual entitled to visitation of the child, with the intent to
161 interfere with the visitation of the child.

162 (b) ~~[A person]~~ An actor who is entitled to visitation of a child ~~[is guilty of]~~ commits
163 custodial interference if, during a period of time when the ~~[person]~~ actor is not entitled to
164 visitation of the child, the ~~[person]~~ actor takes, entices, conceals, detains, or withholds the
165 child from ~~[a person]~~ an individual who is entitled to custody of the child, with the intent to
166 interfere with the custody of the child.

167 (3)~~[Except as provided in Subsection (4) or (5), custodial interference]~~ (a) A violation
168 of Subsection (2) is a class B misdemeanor.

169 ~~[(4)] (b) [Except as provided in Subsection (5), the actor described in Subsection (2)~~
170 ~~is guilty of]~~ Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a class A
171 misdemeanor if the actor:

172 ~~[(a)] (i)~~ commits custodial interference; and

173 ~~[(b)] (ii)~~ has been convicted of custodial interference at least twice in the two-year
174 period immediately preceding the day on which the commission of custodial interference
175 described in Subsection ~~[(4)] (3)~~ (a) occurs.

176 ~~[(5) Custodial interference]~~ (c) Notwithstanding Subsections (3)(a) and (b), a violation
177 of Subsection (2) is a felony of the third degree if, during the course of the custodial
178 interference, the actor ~~[described in Subsection (2)]~~ removes, causes the removal, or directs
179 the removal of the child from the state.

180 ~~[(6)] (4)~~ In addition to the affirmative defenses described in Section 76-5-305, it is an
181 affirmative defense to the crime of custodial interference that:

182 (a) the action is consented to by the person whose custody or visitation of the child
183 was interfered with; or

184 (b) (i) the action is based on a reasonable belief that the action is necessary to
185 protect a child from abuse, including sexual abuse; and

186 (ii) before engaging in the action, the person reports the person's intention to engage
187 in the action, and the basis for the belief described in Subsection ~~[(6)] (4)~~ (b)(i), to the
188 Division of Child and Family Services or law enforcement.

189
190 **76-5-303.5. Notification of conviction of custodial interference.**

191 (1) As used in this section:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

(a) "Convicted" means that ~~[a person]~~ an individual has received a conviction.

(b) "Conviction" is as defined in **Section 53-3-102. (see below)**

(2) If ~~[a person]~~ an individual is convicted of custodial interference under Section 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and whether the conviction is for:

(a) a class B misdemeanor, under Subsection 76-5-303(3);

(b) a class A misdemeanor, under Subsection 76-5-303(4); or

(c) a felony, under Subsection 76-5-303(5).

The definition of "**conviction**" seems too broad for this section and the criminal code generally.

"Conviction" means any of the following:

(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(c) a plea of guilty or nolo contendere accepted by the court;

(d) the payment of a fine or court costs; or

(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

76-5-304. Unlawful detention and unlawful detention of a minor.

(1) As used in this section:

(a) acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is:

(i) a mentally incompetent person; or

(ii) a minor who is 14 or 15 years old.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2)(a) An actor commits unlawful detention if the actor intentionally or knowingly, without authority of law, and against the will of the victim, detains or restrains the victim .

~~[under circumstances not constituting a violation of:~~

~~—— (a) kidnapping, Section 76-5-301; or~~

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

~~_____ (b) child kidnapping, Section 76-5-301.1.]~~

~~[(2)] (b)~~ An actor commits unlawful detention of a minor if the actor is at least four or more years older than the minor, and intentionally or knowingly, without authority of law, and against the will of the [victim] minor, coerces or exerts influence over the [victim] minor with the intent to cause the [victim] minor to remain with the actor for an unreasonable period of time under the circumstances ~~. [; and:~~

~~_____ (a) the act is under circumstances not constituting a violation of:~~

~~_____ (i) kidnapping, Section 76-5-301; or~~

~~_____ (ii) child kidnapping, Section 76-5-301.1; and~~

~~_____ (b) the actor is at least four or more years older than the victim.]~~

~~[(3) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is:~~

~~_____ (a) a mentally incompetent person; or~~

~~_____ (b) a minor who is 14 or 15 years of age. (4)]~~

(3) [Unlawful detention] A violation of Subsection (2) is a class B misdemeanor.

(4) If the conduct of the actor amounts to a violation under one of the following, the actor shall be charged with the violation and not under Subsection (2)(a) or (2)(b):

(i) kidnapping, as described in Section 76-5-301; or

(ii) child kidnapping, as described in Section 76-5-301.1.

76-5-305. Defenses.

(1) It is a defense under this part that:

(a) the actor was acting under a reasonable belief that:

(i) the conduct was necessary to protect [any person] any individual from imminent bodily injury or death; or

(ii) the detention or restraint was authorized by law; or

(b) the alleged victim is younger than 18 years [of age] old or is mentally incompetent, and the actor was acting under a reasonable belief that the custodian, guardian, legal guardian, custodial parent, or person acting in loco parentis to the victim would, if present, have consented to the actor's conduct.

(2) Subsection (1)(b) may not be used as a defense to conduct described in Section 76-5-308.5.

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

76-5-306. Lesser included offenses. ~~Repeal in final bill. Left for reference for now.~~

In this part, the following offenses are lesser included offenses of Section 76-5-302, aggravated kidnapping:

(1) Section 76-5-301, kidnapping; and

(2) Section 76-5-304, unlawful detention or unlawful detention of a minor.

76-5-307. Definitions.

As used in Sections 76-5-308 through 76-5-310 of this part:

(1) "Child" means ~~[a person]~~ an individual younger than 18 years ~~[of age]~~ old.

(2) "Commercial purpose" includes direct or indirect participation in or facilitation of the transportation of one or more ~~[persons]~~ individuals for the purpose of:

(a) charging or obtaining a fee for the transportation; or

(b) obtaining, exchanging, or receiving any thing or item of value or an attempt to conduct any of these activities.

(3) "Facilitation" regarding transportation under Subsection (2) includes providing:

(a) travel arrangement services;

(b) payment for the costs of travel; or

(c) property that would advance an act of transportation, including a vehicle or other means of transportation, a weapon, false identification, and making lodging available, including by rent, lease, or sale.

(4) "Family member" means ~~[a person's]~~ an individual's parent, grandparent, sibling, or any other person related to the ~~[person]~~ individual by consanguinity or affinity to the second degree.

76-5-308. Human trafficking ~~[--Human smuggling].~~

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits human trafficking for labor or sexual exploitation if the actor recruits, harbors, transports, obtains, patronizes, or solicits ~~[a person]~~ an individual through the use of force, fraud, or coercion, which may include:

(a) threatening serious harm to, or physical restraint against, that ~~[person]~~ individual or ~~[a third person]~~ another individual;

(b) destroying, concealing, removing, confiscating, or possessing any passport,

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

288 immigration document, or other government-issued identification document;

289 (c) abusing or threatening abuse of the law or legal process against the [person]
290 individual or [a third person] another individual ;

291 (d) using a condition of [a person] an individual being a debtor due to a pledge of the
292 [debtor's] individual's personal services or the personal services of [a person] an individual
293 under the control of the debtor as a security for debt where the reasonable value of the
294 services is not applied toward the liquidation of the debt or the length and nature of those
295 services are not respectively limited and defined;

296 (e) using a condition of servitude by means of any scheme, plan, or pattern intended
297 to cause [a person] an individual to believe that if the [person] individual did not enter into
298 or continue in a condition of servitude, [that person] the individual or [a third person]
299 another individual would suffer serious harm or physical restraint, or would be threatened
300 with abuse of legal process; or

301 (f) creating or exploiting a relationship where the [person] individual is dependent on
302 the actor.

303 (3) A violation of Subsection (2) is a second degree felony.

304 [(2)] (4) (a) Human trafficking for labor includes any labor obtained through force,
305 fraud, or coercion as described in Subsection [(+)] (2) .

306 (b) Human trafficking for sexual exploitation includes all forms of commercial sexual
307 activity, which may include the following conduct when the person acts under force, fraud, or
308 coercion as described in Subsection [(+)] (2) :

309 (i) sexually explicit performance;

310 (ii) prostitution;

311 (iii) participation in the production of pornography;

312 (iv) performance in strip clubs; and

313 (v) exotic dancing or display.

314 [(3) A person commits human smuggling by transporting or procuring the
315 transportation for one or more persons for a commercial purpose, knowing or having reason
316 to know that the person or persons transported or to be transported are not:

317 —— (a) citizens of the United States;

318 —— (b) permanent resident aliens; or

319 —— (c) otherwise lawfully in this state or entitled to be in this state.]

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

76-5-308.1. Human smuggling -- Penalty.

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits human smuggling if the actor transports or procures the transportation for one or more individuals for a commercial purpose, knowing or having reason to know that the individual or individuals transported or to be transported are not:

(a) citizens of the United States;

(b) permanent resident aliens; or

(c) otherwise lawfully in this state or entitled to be in this state.

(3) A violation of Subsection (2) is a second degree felony.

76-5-308.5. Human trafficking of a child -- Penalties.

(1)(a) As used in this section, "Commercial sexual activity with a child" means any sexual act with a child, ~~[on account of]~~ for which anything of value is given to or received by any person.

(b) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits human trafficking of a child if the actor recruits, harbors, transports, obtains, patronizes, or solicits a child for sexual exploitation or forced labor.

(3) A violation of Subsection (2) is a first degree felony.

~~[(3)]~~ (4) (a) Human trafficking of a child for labor includes any labor obtained through force, fraud, ~~[and]~~ or coercion as described in Section 76-5-308.

(b) Human trafficking of a child for sexual exploitation includes all forms of commercial sexual activity with a child, including sexually explicit performance, prostitution, participation in the production of pornography, performance in a strip club, and exotic dancing or display.

~~[(4) Human trafficking of a child in violation of this section is a first degree felony.]~~

76-5-309. Human trafficking and human smuggling -- Penalties.

~~[(1) Human trafficking for labor and human trafficking for sexual exploitation are each a second degree felony, except under Section 76-5-310.]~~

~~———— (2) Human smuggling under Section 76-5-308 of one or more persons is a second degree felony, except under Section 76-5-310.~~

~~———— (3) Human trafficking for labor or for sexual exploitation, human trafficking of a child,~~

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

352 ~~and human smuggling are each a separate offense from any other crime committed in~~
353 ~~relationship to the commission of either of these offenses.]~~

354 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

355 ~~[(4)] (2) [Under circumstances not amounting to aggravated sexual abuse of a child,~~
356 ~~a violation of Subsection 76-5-404.1(4)(h), a person]~~ An actor is a party to the offense who
357 benefits, receives, or exchanges anything of value from knowing participation in:

358 (a) human trafficking for labor or for sexual exploitation in violation of Section
359 76-5-308 ~~[is guilty of a second degree felony];~~

360 (b) human smuggling ~~[is guilty of a third degree felony];~~ and

361 (c) human trafficking of a child ~~[is guilty of a first degree felony].~~

362 ~~[(5)]~~ (3)(a) A violation of Subsection (2)(a) is a second degree felony.

363 (b) A violation of Subsection (2)(b) is a third degree felony.

364 (c) A violation of Subsection (2)(c) is a first degree felony.

365 (4) [A person] An actor commits a separate offense of human trafficking, human
366 trafficking of a child, or human smuggling for each ~~[person]~~ individual who is smuggled or
367 trafficked under Section 76-5-308, 76-5-308.1, 76-5-308.5, ~~[or]~~ 76-5-310 , or 76-5-310.1 .

368

369 **76-5-310. Aggravated human trafficking ~~[and aggravated human smuggling]~~ --**
370 **Penalties.**

371 (1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

372 (2) An actor commits aggravated human trafficking for labor or sexual exploitation ~~[or~~
373 ~~aggravated human smuggling]~~ if, in the course of committing an offense under Section
374 76-5-308 the offense:

375 (a) results in the death of ~~[the]~~ a trafficked ~~[or smuggled person]~~ individual;

376 (b) results in serious bodily injury of ~~[the]~~ a trafficked ~~[or smuggled person]~~
377 individual ;

378 (c) involves:

379 (i) rape under Section 76-5-402;

380 (ii) rape of a child under Section 76-5-402.1;

381 (iii) object rape under Section 76-5-402.2;

382 (iv) object rape of a child under Section 76-5-402.3;

383 (v) forcible sodomy under Section 76-5-403;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- (vi) sodomy on a child under Section 76-5-403.1;
- (vii) aggravated sexual abuse of a child under Section 76-5-404.1; or
- (viii) aggravated sexual assault under Section 76-5-405;
- (d) involves the trafficking of 10 or more [victims] individuals ; or
- (e) involves [a victim] an individual trafficked for longer than 30 consecutive days.

~~[(2) An actor commits aggravated human smuggling if the actor commits human smuggling under Section 76-5-308 and any human being whom the person engages in smuggling is:~~

~~—— (a) a child; and~~

~~—— (b) not accompanied by a family member who is 18 years of age or older.]~~

(3) ~~[(a) Aggravated human trafficking]~~ A violation of Subsection (2) is a first degree felony.

~~[(b) Aggravated human smuggling is a first degree felony.]~~

~~[(c)]~~ (4) Aggravated human trafficking ~~[and aggravated human smuggling are each]~~ is a separate offense from any other crime committed in relationship to the commission of ~~[either of these offenses]~~ the offense .

76-5-310.1. Aggravated human smuggling -- Penalties.

(1) Terms defined in Sections 76-1-101.5 and 76-5-307 apply to this section.

(2) An actor commits aggravated human smuggling if, in the course of committing an offense under Section 76-5-308.1, the offense:

(a) results in the death of a smuggled individual;

(b) results in serious bodily injury to a smuggled individual ;

(c) involves the smuggling of a child; or

(d) involves:

(i) rape under Section 76-5-402;

(ii) rape of a child under Section 76-5-402.1;

(iii) object rape under Section 76-5-402.2;

(iv) object rape of a child under Section 76-5-402.3;

(v) forcible sodomy under Section 76-5-403;

(vi) sodomy on a child under Section 76-5-403.1;

(vii) aggravated sexual abuse of a child under Section 76-5-404.1; or

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

(viii) aggravated sexual assault under Section 76-5-405.

(3) A violation of Subsection (2) is a first degree felony.

(4) Aggravated human smuggling is a separate offense from any other crime committed in relationship to the offense .

76-5-311. Human trafficking of a vulnerable adult -- Penalties.

(1) (a) As used in this section:

~~[(a)]~~ (i) "Commercial sexual activity with a vulnerable adult" means any sexual act with a vulnerable adult for which anything of value is given to or received by any individual.

~~[(b)]~~ (ii) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111(1).

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits human trafficking of a vulnerable adult if the actor:

(a) recruits, harbors, transports, or obtains a vulnerable adult for sexual exploitation or forced labor; or

(b) patronizes or solicits a vulnerable adult for sexual exploitation or forced labor when the actor knew or should have known of the victim's vulnerability.

(3) A violation of Subsection (2) is a first degree felony.

~~[(3)]~~ (4) (a) Human trafficking of a vulnerable adult for labor includes any labor obtained through force, fraud, or coercion as described in Section 76-5-308.

(b) Human trafficking of a vulnerable adult for sexual exploitation includes all forms of commercial sexual activity with a vulnerable adult involving:

(i) sexually explicit performances;

(ii) prostitution;

(iii) participation in the production of pornography;

(iv) performance in a strip club; or

(v) exotic dancing or display.

~~[(4) Human trafficking of a vulnerable adult in violation of this section is a first degree felony.]~~